

Minutes of Wednesday, January 6, 2016
North Delta Water Agency Board of Directors Meeting
14120 Grand Ave. (Walnut Grove Community Church), Walnut Grove

Call to Order

Chairman Mello called the board of directors meeting to order at 9:41 a.m. on Wednesday, January 6, 2016. A quorum was determined at that time. Those present:

Directors

Steve Mello, Division 1
Topper van Loben Sels, Division 2
Jack Kuechler, Division 3
Tom Hester, Division 5

Staff

Melinda Terry, Manager
Cindy Tiffany, Assistant Manager
Kevin O'Brien, Downey Brand
Gary Kienlen, MBK Engineers
Angela Bezzone, MBK Engineers

Others

See attached sign-in sheet.

Absent

Kenric Jameson, Division 4

Approval of the Minutes

No corrections or additions were made to the December 9, 2015 minutes.

MOTION by Director Kuechler to approve the December 9, 2015 minutes. Seconded by Director van Loben Sels, and unanimously approved by a voice vote. (AYES: Mello, van Loben Sels, Hester, Kuechler)

Financial Reports

Cindy Tiffany informed the board that the Agency already received assessments from Solano and San Joaquin Counties and she sent the first half of the annual Contract payment to DWR. Following up on the prior board meeting discussion about NDWA's employee retirement liability under CalPERS, she informed them that based on the most recent CalPERS Actuarial Valuation from June 30, 2013 the Agency's estimated Termination Liability is \$134,350. To determine a more accurate final termination amount NDWA would need to adopt a resolution requesting CalPERS conduct a pre-valuation, which would also formally initiate the termination process. No action was taken by the board, but Director Kuechler recommended the board review the CalPERS liability annually.

Manager Report

After discussing dates and locations for a Special Board Meeting for DWR to answer landowner questions about applying for compensation under their Special Contract Claims Procedure, the board decided to have the informational-only special meeting on the evening of January 26th at the Walnut Grove Community Church.

Each of the counties has officially certified the NDWA elections by the Board of Supervisors adopting resolutions appointing the recommended directors to their respective Divisions. She provided the Oath of Office to complete the process.

Ad- Hoc Committee Reports

Directors Hester and Kuechler provided their report of the ad-hoc committee on Projection of Contract Payments. Director Hester distributed a "Contract Payment Projection" spreadsheet showing estimated

contract payments over the next 40 years, assuming a 3% increase in annual assessment revenues, 2% interest rate on reserve funds, 3% increase in annual operating expenses, and a 25% increase in DWR contract payment every 5 years. The Board discussed the trending, noting that the reserves builds until 2031 and then begins to drop quickly after that. The Board agreed to review these projections annually, including a new column with actual expenses, and will discuss the reserves in more detail in June when they adopt the annual budget and assessment rate.

Kevin O'Brien distributed a first draft of an editorial piece for the Agency to consider submitting to newspapers. The Board commented that the draft focused more on flood protection than NDWA issues and recommended the Opinion Editorial Ad-Hoc Committee (Kuechler and Mello) work with legal counsel on revisions that express the Agency's expectations for the State to maintain commitments made based on the history of water rights, the Agency's creation, and the subsequent execution of a Contract with DWR in 1981.

Reporting for the Groundwater Ad-Hoc Committee, Directors Kuechler and van Loben Sels recommended that NDWA sign the Solano Groundwater Basin MOU and authorize the Manager to sign on behalf of the Agency, including an amended version as long as it is not legally or financially binding for NDWA. Director Kuechler commented that the MOU formally provides NDWA a seat at the table without the Agency being obligated to anything beyond agreeing to participate in public discussions with other water agencies about the formation of a Groundwater Sustainability Agency (GSA).

Darrell Eck with Sacramento County Department of Water Resources reported that there have been general conversations among various water agencies in Sacramento County about forming a GSA, but no discussion of the Delta area has occurred and coordination amongst agencies has been more informal than Solano County's public process. Director van Loben Sels informed the board that the Sacramento County Farm Bureau has scheduled a January 15th special informational meeting on this issue and he has been involved in conversations with a local agency in the Sloughhouse area regarding their interest in forming a GSA. Discussion ensued with the board and members of the public expressing concerns about the Delta's groundwater not being connected to the rest of the basin and the difficulties of changing basin boundaries. Director Kuechler recommended the ad-hoc committee continue to evaluate the costs and process involved in forming a Groundwater Sustainability Agency (GSA) before making a final recommendation to the board.

MOTION by Director Kuechler to authorize the Manager to sign the Solano Groundwater Basin MOU allowing NDWA to formally participate in discussions with other water agencies on the formation of a Groundwater Sustainability Agency as long as any amendments to the MOU are not binding or detrimental to the Agency. Seconded by Director van Loben Sels and unanimously approved by a voice vote. (AYES: Mello, van Loben Sels, Hester, and Kuechler)

Delta and Drought Report

Melinda Terry reported that the U.S. Army Corp of Engineers is not holding a public hearing on the CA WaterFix 404 permit, but the regulatory agencies considering permits for WaterFix will be on a panel at the Delta Protection Commission on January 21st, and O'Brien will provide an update on NDWA's protest of DWR's water rights petition in his legal report.

She informed the board about a public comment opportunity on a conservation assessment being conducted by the CA Department of Fish and Wildlife in the Cache Slough Complex. Explaining that

this report will set the stage for implementation of individual habitat projects in the Cache Slough region, she recommended the Agency submit general comments about the importance of the State maintaining compliance with the Contract. DWR has also been working with landowners on Sutter and Steamboat Sloughs regarding installation of temporary drought barriers in 2016. She will contact DWR to see if they are developing an EIR for a project to allow barrier installation up to three times in a 10-year period as proposed last year so we can determine if the Agency will have additional legal and engineering costs to continue negotiating an agreement with DWR. She will also finalize and send a letter to DWR requesting reimbursement for legal and engineering expenses incurred so far in 2014 and 2015.

Curtailments for all water rights have been lifted by the State Water Resources Control Board (SWRCB). They also recently approved extending TUCPs governing SWP/CVP operations with new requirements for further evaluation of developing minimum storage amounts for the project reservoirs, more transparent reporting by the projects on meeting standards, and submission of a 2016 drought contingency plan by January 15, 2016. Delta Watermaster, Michael George, briefed the board on expected revisions to the draft regulations dictating water diversion measuring and monitoring requirements pursuant to SB 88.

The Executive Director of the Delta Protection Commission, Erik Vink, thanked the Agency for their contribution to co-sponsor workshops for the Delta Leadership Program which has twenty-one participants.

Legal Report

Kevin O'Brien distributed and reviewed the protest filed on January 5, 2016 by NDWA, in combination with RD 999, RD 2060 and RD 2068, on the CA Waterfix petition to add three new points of diversion on the Sacramento River to the water permits for the SWP and CVP. NDWA has until March 1, 2016 to prepare and submit all relevant testimony and evidence supporting the protest, including the Agency's terms for dismissal and modeling work by MBK that could be expensive. Gary Kienlen described the CalSimII hydrology modeling work MBK has done for the North State Water Alliance that shows Delta inflows, but not water quality or surface elevations in the Delta, and expressed concern with the short timeline and expertise needed to conduct new modeling runs. Staff will confer with Contra Costa Water District on whether they have water quality modeling work NDWA could utilize or cost-share in before authorizing MBK to prepare additional modeling evidence beyond what has already been prepared by Walter Bourez. The State Water Control Board (SWCB) is currently scheduled to begin hearings in April 2016. O'Brien reviewed list of witnesses with a short description of the testimony he will be preparing for them. The hearings could be delayed if the water board decides to provide time for parties to negotiate settlement agreements to resolve protests. Asked about the costs the Agency could expect to incur, O'Brien estimated about \$150,000. The board authorized an initial maximum budget of \$150,000 for legal and engineering expenses, but will consider revising once an actual scope of work estimate is provided and discussed at the February board meeting.

An agreement to extend the Special Contract Claims Procedure eligibility period past August 15, 2015 is still being negotiated with DWR, but finalization is close so O'Brien will try to have an agreement executed prior to the January 26th Special Board Meeting. He reminded the board that they previously authorized the Manager to sign this agreement once he approved a final version.

Engineering Report

Gary Kienlen distributed water quality graphs, noting salinity levels are currently within the Contract criteria. Export pumping from the Delta has increased, but he expects water quality conditions to improve within the Delta due to reduced diversions upstream of the Delta, forecasted tidal action and weather, and extended closure of cross channel gates for fish.

Closed Session

The board conferred with legal counsel in closed session for purposes of being briefed on potential for anticipated litigation on two matters including *H-Pond LLC v North Delta Water Agency* and possible settlement of *Steamboat Acres LLC v. Daniel P Whaley, North Delta Water Agency, et al.* Upon reconvening in open session, Chairman Mello announced that no reportable action was taken in closed session.

Announcements

A Special Board Meeting is scheduled for 5:30 p.m. on Tuesday, January 26, 2016 with the next regular board meeting at 9:30 a.m. on Wednesday, February 3, 2016. Both will be at the Walnut Grove Community Church.

Adjournment

Chairman Mello adjourned the meeting at 11:48 am

Respectfully submitted by Cindy Tiffany, Assistant Manager